

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**

S.B. Criminal Revision Petition No. 852/2018
CNR: RJHC010527402018 | URN: CRLR / 2212U / 2018

- Shyamlal S/o Bhanwarlal, Aged About 49 Years, R/o Vill. Saloda, P.s. Khamnor,
- Smt. Pushpa W/o Shyamlal, Aged About 45 Years, R/o Vill. Saloda, P.s. Khamnor,

-----Petitioners

Versus

- Kanta W/o Shyamlal, R/o Saloda, At Present Nathdwara Distt. Rajsamand
- The State Of Rajasthan, Through PP

-----Respondents

For Petitioner(s)	:	Mr. Digvijay Singh Chauhan
For Respondent(s)	:	Mr. Prem Singh Panwar, PP Mr. Jayant Jain Ms. Urwashi Kala

**HON'BLE MR. JUSTICE KULDEEP MATHUR
ORDER**

06/08/2026

- Heard learned counsel for the parties. Perused the material available on record.
- Briefly stated, the facts of the case are that the complainant– Smt. Urwashi lodged an FIR against the petitioners alleging, inter alia, that her marriage with petitioner No.1 was solemnized about thirty years prior to the lodging of the FIR. It was alleged that soon after the marriage, petitioner No.1 started harassing and humiliating her in connection with demand of dowry. It was further alleged that about two months prior to the lodging of the FIR, petitioner No.1 forcibly took away her *stridhan* and turned her out of the matrimonial home. After investigation, the police filed charge-sheet against petitioner No.1 for the offences punishable

under Sections 498-A and 494 IPC, whereas petitioner No.2 was charge-sheeted for the offences punishable under Sections 494/109 IPC.

3. The trial commenced before the learned Judicial Magistrate, Nathdwara, during which eleven prosecution witnesses were examined. After conducting the trial, the learned trial Court, vide judgment dated 06.11.2017, acquitted the petitioners of the charges levelled against them.

4. Aggrieved by the judgment dated 06.11.2017, the State preferred an appeal before the learned Additional Sessions Judge, Nathdwara, District Rajsamand, being Criminal Appeal No.28/2017. While considering the appeal, the learned appellate Court, vide the impugned judgment dated 17.07.2018, remanded the matter to the learned trial Court with a direction to pass a fresh order after taking into consideration the oral and documentary evidence available on record as well as the applicable provisions of law.

5. Learned counsel for the petitioners submitted that the learned appellate Court committed a serious jurisdictional error in remanding the matter to the learned trial Court with a direction to pass a fresh order. It was submitted that if the appellate Court was of the opinion that the judgment of acquittal passed by the learned trial Court suffered from any illegality or infirmity, it was required to independently examine and appreciate the evidence available on record and decide the appeal on merits. It was contended that the appellate Court, without undertaking any meaningful analysis of the evidence, arrived at a general conclusion that the judgment of the learned trial Court was not in

consonance with the oral and documentary evidence and, on that basis, remanded the matter for a fresh decision.

6. Learned counsel further submitted that the powers of the appellate Court under Section 386 Cr.P.C. do not contemplate remand of a criminal appeal merely for re-appreciation or re-evaluation of the evidence already recorded. According to learned counsel, remand could be ordered in circumstances warranting further inquiry or retrial, but the appellate Court could not direct the trial Court to reconsider the same evidence and pass a fresh judgment. It was, therefore, prayed that the impugned order be quashed and set aside.

7. Section 386 Cr.P.C is reproduced below for ready reference:-

"386. Powers of the Appellate Court. -

After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and in the case of an appeal under Section 377 or Section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may -

(a) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(b) in an appeal from a conviction -

(i) reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or

(ii) alter the finding, maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same;

(c) in an appeal for enhancement of sentence -

(i) reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court competent to try the offence, or

(ii) alter the finding maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, so as to enhance or reduce the same;

(d) in an appeal from any other order, alter or reverse such order

(e) make any amendment or any consequential or incidental order that may be just or proper:

Provided that the sentence shall not be enhanced unless the accused has had an opportunity of showing cause against such enhancement:

Provided further that the Appellate Court shall not inflict greater punishment for the offence which in its opinion the accused has committed, than might have been inflicted for that offence by the Court passing the order or sentence under appeal."

8. Section 386 Cr.P.C. prescribes the powers of the appellate Court while deciding an appeal. In an appeal from an order of acquittal, the appellate Court is empowered, *inter alia*, to reverse the order and direct that further inquiry be made, or that the accused be retried or committed for trial, as the case may be. The appellate Court is also required to exercise its appellate jurisdiction in accordance with the parameters prescribed by the said provision.

9. In the present case, a perusal of the impugned judgment reveals that the learned appellate Court has neither directed any further inquiry nor ordered a retrial of the petitioners. Instead, having found fault with the appreciation of the oral and documentary evidence by the learned trial Court, it remanded the matter to the learned trial Court with a direction to pass a fresh order after reconsidering the material already available on record.

10. In the opinion of this Court, such a course could not have been adopted by the learned appellate Court. Once the appeal was before the appellate Court and the entire evidence led before the learned trial Court was available on record, it was incumbent upon the appellate Court, if it was of the opinion that the findings recorded by the learned trial Court were erroneous or that material evidence had not been properly appreciated, to itself examine and re-appreciate the evidence and thereafter arrive at its own conclusion in accordance with law.

11. The power of remand cannot be exercised merely to require the trial Court to re-appreciate the evidence already available on record and pass a fresh judgment. Such a direction, in substance, amounts to requiring the trial Court to reconsider the very same material and arrive at a fresh conclusion, while leaving the appellate Court's own appellate jurisdiction unexercised.

12. It is also well settled that an appellate Court, while dealing with an appeal against acquittal, is entitled to re-appreciate the evidence and arrive at its own conclusion, subject to the settled principles governing interference with an order of acquittal. However, if the appellate Court finds that the judgment of acquittal suffers from erroneous appreciation of evidence, it cannot ordinarily avoid deciding the appeal on merits by simply remanding the matter to the trial Court for fresh appreciation of the same evidence.

13. In the present case, the learned appellate Court has not recorded any finding indicating the necessity of conducting any further inquiry or retrial. The remand was founded essentially upon the appellate Court's view that the oral and documentary

evidence had not been properly appreciated by the learned trial Court. Therefore, the impugned order of remand is not sustainable in law.

14. In view of the aforesaid discussion, the order dated 17.07.2018 passed by the learned Additional Sessions Judge, Nathdwara, District Rajsamand, in Criminal Appeal No.28/2017 is hereby quashed and set aside.

15. The learned appellate Court is directed to re-hear and decide Criminal Appeal No.28/2017 on its own merits, strictly in accordance with law and keeping in view the provisions of Section 386 Cr.P.C., without being influenced by any observation made by this Court herein. The appeal shall be decided as expeditiously as possible, preferably within a period of one year from the date of receipt of a copy of this order.

16. All pending application(s), if any, also stand disposed of accordingly.

(KULDEEP MATHUR),J